

Reply under **37 CFR 1.116** –  
Expedited Procedure –  
Technology Center (2643)

PATENT 10/023,406  
AUS920010842US1

#### **D. REMARKS**

##### ***Status of Claims***

Claims 1-39 are pending in the application. No claims are currently amended.

##### ***Double Patenting***

The Examiner provisionally rejects claims 1-39 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/023,407. [Final Office Action, p. 3] The Examiner states "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to the same subject matter with minor wording variations." [Final Office Action, p. 3]

During a telephone interview on March 28, 2006, Applicants' representative notified the Examiner that the cited copending Application No. 10/023,407 had already issued into Patent No. 6,977,998 on December 20, 2005, prior to the issuance of the Final Office Action on January 17, 2006. In view of the issued status of Patent No. 6,977,998, to overcome the provisional obviousness-type double patenting rejection, Applicants file a terminal disclaimer herewith in compliance with 37 CFR 1.321(c) showing that Patent No. 6,977,998 is commonly owned with the present application. In view of the terminal disclaimer, Applicants respectfully request that the Examiner withdraw the provisional obviousness-type double patenting rejection and allow claims 1-39.

##### ***Admittance After Final***

Applicants note that in the "response to arguments" on page 2 of the Final Office Action, the Examiner states that regarding Applicants' arguments filed on December 12, 2005, the double patenting rejection is maintained because the Examiner did not find the terminal disclaimer attached to the reply. In addition, in the "response to arguments" on page 2 of the Final Office Action, the Examiner withdraws all other rejections as to claims 1-39, responsive to Applicants' arguments filed on December 12, 2005.

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Applicants note that MPEP 714.12 provides that "any amendment that will place the application... in condition for allowance... may be entered." In addition, Applicants note that 37 CFR 1.116(e) provides for the admitting an affidavit or other evidence after a final action upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented." Applicants respectfully assert that the terminal disclaimer filed herewith operates to remove the only standing rejection of non-statutory double patenting, and therefore admittance of the terminal disclaimer clearly places the application in condition for allowance. In addition, Applicants respectfully assert that the terminal disclaimer is necessary to overcome the double patenting rejection and was only inadvertently not filed with the response of December 12, 2005. Applicants' assertions on page 16 of Applicants' response dated December 12, 2005, clearly indicate Applicants' intent to file the terminal disclaimer as part of the response.

Therefore, in view Applicants compliance with 37 CFR 1.116, Applicants respectfully request entry of the terminal disclaimer and allowance of claims 1-39.

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**Conclusion**

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims are respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

Applicants request that the Commissioner charge any fees or credit any overpayments in association with the present application to IBM Account No. 09-0447.

Respectfully submitted,

 m 4/10/2006

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